

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3456 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI PUNJABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

#. The Commissioner of Police, Surat City, Surat, passed an order on April 17, 1999, under section 3(1) of the Gujarat Prevention Anti Social Activities Act, 1985 ("PASA Act" for short), detaining one Shardaben, widow of Karshanbhai Kanjibhai Kharva of Nanpura, Surat, under the

provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration about 9 offences registered against the detenu under the Bombay Prohibition Act. The detaining authority also considered statements of two anonymous witnesses and arrived at a conclusion that the detenu is a bootlegger; his activities are detrimental to public order; that resorting to less drastic remedies under other laws may not prove to be efficacious and, therefore, he is required to be detained under the provisions of the PASA Act.

#. Mr. Kapadia, learned advocate appearing for the petitioner, has submitted that the order is bad because of improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to statements of anonymous witnesses recorded on 7th and 8th March, 1999, which were verified on 6th April, 1999, followed by an order of detention on 7th April, 1999. He, therefore, submitted that there was no time for the authority to consider the need for exercise of powers under Section 9(2) of the PASA Act. He has relied on the decision of a Division Bench of this Court in the case of Kalidas C. Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 in support of his arguments.

#. Mr. Bukhari, learned Assistant Government Pleader, has opposed this petition.

#. The respondent-authorities have not filed any affidavit in reply.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

6.1 The statements were verified on 6th April, 1999 and the order of detention came to be passed on 7th April, 1999. There was, therefore, no time lag between these two events which could have made possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses

are correct and the fear expressed by these witnesses qua the petitioner is genuine and that, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution and any error or lapse found in exercise of such power would render the order of detention bad in law. The subjective satisfaction required to be recorded by the detaining is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on 6th April, 1999 and the order is passed on 7th April, 1999, there is no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. Therefore, the decision in the case of Kalidas Chandubhai Kahar (supra) relied upon by the learned Advocate for the petitioner is clearly applicable.

#. In view of the above discussion, the petition is allowed. The order of detention in respect of the detenu-Shardaben, widow of Karshanbhai Kanjibhai Kharva, dated 7th April, 1999, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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